IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2109 OF 1985

1. Ramchandra Akkoba Hanchanale;

2. Bandu Akkoba Hanchanale;

3. Pandurang Akkoba Hanchanale. ... Petitioners

versus

Dattatraya Vithal Pandit, since deceased, by his heirs -

1(a) Smt. Surekha Dattatraya Pandit;

1(b) Tejshree Dattatraya Pandit;

1(c) Nilottama Dattatraya Pandit;

1(d) Nikhil Dattatraya Pandit;

1(e) Nilesh Dattatraya Pandit. ... Respondents

...

Mr. M. R. Katikar, for Petitioners Nos. 2 and 3.

Ms. Seema Sarnaik, for the Respondents.

Writ Petition stands dismissed as against Petitioner No. 1.

...

CORAM : A.M.KHANWILKAR,J.

16th June 2004

ORAL JUDGMENT :

01. This writ petition takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Camp Kolhapur, dated November 30, 1984, in Revision No. MRT.KP.136 of 1983. The lands in question are R.S. Nos. 87/1 and 87/2 admeasuring 12 acres 33 gunthas and 3 gunthas respectively of village Nandgaon in Karvir Tahsil of Kolhapur District. The lands were owned by Smt. Ambabai Vithal Pandit, who was widow on the Tillers' Day, i.e., 1-4-1957. She died on 10th February 1976. According to the Petitioners, the lands were under cultivation of their predecessor Akkoba Hanchanale since 1951 as tenant. The said Akkoba Hanchanale expired on 3rd September 1973. It appears that proceedings under section 32-G of the Bombay Tenancy and Agricultural Lands Act (for short, "the Act") were commenced in respect of the suit land but came to be dropped as the landlady was widow being disabled landlord. It is the case of the

Petitioners that after the landlady expired, they gave notice on 11th February 1977 exercising right to purchase the suit lands in terms of section 32F of the Act. On that basis, proceedings for determination of purchase price were commenced by the Petitioners. The Tahsildar allowed the application preferred by the Petitioners, which decision was carried in appeal by the landlady, which came to be dismissed. However, the revisional authority allowed the revision preferred by the landlady and remanded the matter to the first court to re-consider the case afresh. After remand, the first court examined the materials on record and after appreciating the same found as of fact that there was no relationship of landlord and tenant between the parties whereas record would indicate that the land was being cultivated by the predecessor of the Petitioners in partnership with the landlady Ambabai Vithal Pandit. In that view of the matter, the Court proceeded to reject the application for determination of the purchase price. That decision was carried in appeal by the Petitioners which was dismissed by judgment and order dated June 17, 1983, by the

Sub-Divisional Officer. The Petitioners then carried the matter in revision before the Maharashtra Revenue Tribunal which was also dismissed by the impugned judgment and order. In that sense, the present writ petition takes exception to concurrent decisions of three authorities below.

02. The first point canvassed on behalf of the Petitioners is that the fact that section 32G proceedings were initiated presupposes that there existed relationship of landlord and tenant between the parties and, if it is so, it is too late in the day to hold that there was no such relationship as has been found by the authorities below. Learned Counsel for the Petitioners further contends that the authorities have discarded Mutation Entry No. 1995 on the specious reasoning that the same is not proper and if that Mutation Entry was to be reckoned, it would necessarily follow that the Petitioners' predecessor was cultivating the suit land as tenant. It is thus contended that the authorities below have committed manifest error

in reaching at the conclusion, though concurrently. On the other hand, Counsel for the Respondents submits that no interference is warranted in exercise of writ jurisdiction. It is submitted that the attempt of the Petitioners is to invite this Court to re-appreciate the evidence, which is not the scope of interference in exercise of powers under Article 227 of the Constitution. The Counsel for the Respondents has adopted the reasons and the conclusions which weighed with the three authorities below to contend that no fault can be found with the view as taken by the authorities below and that is a possible view. It is submitted that merely because another view may be possible, that cannot be the basis for interference in exercise of writ jurisdiction.

03. Having considered the rival submissions, I have no hesitation in upholding the concurrent decisions of the three authorities below. All the three authorities have adverted to the relevant evidence on record and on appreciating the same have found as of fact that no

relationship of landlord and tenant existed between the parties whereas the evidence clearly establishes that the landlady and the predecessor of the Petitioners were cultivating the suit land as partners. That finding is supported by materials on record and is a possible view. In the circumstances, it is not possible for this Court to interfere with the finding of fact recorded by the three authorities below. The argument canvassed on behalf of the Petitioners that initiation of proceedings under section 32-G of the Act presupposes that landlord and tenant relationship existed between the parties is fallacious. Merely because those proceedings are initiated, that does not mean that relation has been admitted or has been found to be so by a Court of competent jurisdiction. On the other hand, the issue of relationship between the parties has been considered in the present proceedings throughout by the three authorities below and the conclusion reached by them on that issue is founded on materials available on record. It is, therefore, not possible to countenance the argument that the authorities below have committed manifest error. I find no

merit in the submission that the authorities below have committed any error in ignoring the Mutation Entry No. 1995, being an improper entry. That is not the only basis on which the matter could have been decided. The authorities have also found as of fact that there is no rent receipt or case of oral agreement between the parties. All other aspects noted by the authorities below are equally relevant for deciding the point in issue.

04. In the circumstances, I find no merit in this writ petition. The same is, therefore, dismissed. Rule discharged. No order as to costs.

05. Certified copy expedited.

06. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

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